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In the Supreme Court of the United States

OCTOBER TERM, 1934

NOS. ——

UNITED STATES OF AMERICA, RECONSTRUCTION FINANCE CORPORATION, et al., petitioners

v.

BANKERS TRUST COMPANY AND WILLIAM H. BIXBY, Trustees

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

PETITION

The Solicitor General, on behalf of the United States and the Reconstruction Finance Corporation, prays that writs of certiorari issue to bring before this Court the causes now pending in the Circuit Court of Appeals for the Eighth Circuit which are there entitled *Bankers Trust Company et al., Appellants* v. *Reconstruction Finance Corporation et al.,* Nos. 10071 and 10116, which have

not been submitted to, heard, or decided by that court, and to which the United States and the Reconstruction Finance Corporation are parties.

STATEMENT

The sole question involved in the proceeding below is the validity of the so-called "gold clause" contained in certain thirty-year first-mortgage bonds of the St. Louis, Iron Mountain & Southern Railway Company, River and Gulf Divisions, issued May 1, 1903, in view of the Joint Resolution of Congress of June 5, 1933 (c. 48, 48 Stat. 112), the Executive Orders and Regulations relating to the holding and transfer of gold and foreign-exchange transactions therein, and the Gold Reserve Act of 1934 (approved January 30, 1934), all of which are copied in the Appendix, *infra*, pp. 17–36.

On March 31, 1933, the debtor railroad filed a petition in bankruptcy under Section 77 of the Bankruptcy Act, as amended (R. 3). The petition was allowed by the District Court on the same day (R. 5). Both the petitioners and the respondents became parties to this cause by petitions for leave to intervene, duly allowed, in the District Court (R. 52, 60, 70, 71). The respondents are trustees under the first mortgage aforesaid. The Reconstruction Finance Corporation is a creditor of the railroad in the aggregate amount of $23,134,800, holding as collateral security for its claim bonds which are junior to those secured by the above-mentioned mortgage (R.

61). The United States is the sole stockholder of the Reconstruction Finance Corporation and is further interested by virtue of a claim against the railroad for unpaid taxes amounting to approximately $5,000,000 (R. 82).

The trustees demanded payment in gold coin or its equivalent (R. 58). The District Court for the Eastern District of Missouri found that payment in gold or its equivalent was "impossible in fact and in law" (R. 133) and that—

> the pendency, undisposed of, of the question thus presented interposes a serious obstacle to the continued orderly administration of the affairs of the Debtor Railroad and impedes, delays, hinders and obstructs the reorganization of said Railroad.

It further determined and declared that the trustees and bondholders were "entitled to payment of $1,000 upon each said bond in the principal amount of $1,000, validly issued and outstanding, in such lawful money of the United States as is legal tender for the payment of debts, with interest thereon, also in such lawful money of the United States" (R. 133).

Two separate appeals were taken by the respondents from the decree of the District Court, one under Section 24 (a) and the other under Section 24 (b) of the Bankruptcy Act as amended (R. 137, 254), but the question is identical in each and there is but one record on appeal.

SPECIFICATION OF ERROR

The respondents are contending in the Circuit Court of Appeals that the District Court erred in holding the bonds to be payable at their face amount "in such lawful money of the United States as is legal tender for the payment of debts", and they have challenged the validity of the abovementioned Joint Resolution, Executive Orders, and Regulations.

REASONS FOR GRANTING THE WRITS

This Court on October 8, 1934, granted a petition for a writ of certiorari to the Supreme Court of the State of New York in the case of *Norman* v. *Baltimore and Ohio Railroad Company*, No. 270, which involves the same question of law as that presented in the court below. In view of the widespread effect and possible consequences, both to the Government (including governmental corporations) and to the economic structure of the entire country, of the approval of the claims made in these cases for payment in gold coin or its equivalent, it appears meet and proper that the United States should be accorded the fullest opportunity to participate both by brief and by oral argument in the presentation of the issues and legal principles involved. It is not believed that the exigencies would be fully met by participation as *amicus curiae* in the *Norman* case, assuming that consent and leave therefor should be given.

Billions of dollars of Government securities (more than 21 billions as of March 1, 1934) now outstanding are affected by the issue. Billions of dollars in securities of railroads, industries, States, cities, etc., are likewise affected. Great numbers of our private citizens owe large sums of money evidenced by mortgages, notes, and other obligations containing the so-called gold clause. The total of all such gold clause obligations issued and outstanding in this country is estimated by responsible persons at from 90 to 125 billion dollars. The solvency of many citizens, industries and local governments, perhaps even the financial stability of the National Government, may be affected by the determination of this great issue. Succinctly the issue is this: *Are all these obligations to be discharged at the rate of $1.69 for each $1.00 borrowed?*

The Government has previously considered the legal questions in connection with the inauguration and execution of the challenged measures, and regards it as both a privilege and a duty to tender its full assistance to the Court.

Aside from the pendency of the *Norman* case, the issue in this case alone is of sufficient public importance and disturbing effect, while it remains unsettled, to warrant the interposition of this Court in order to accomplish a final and speedy settlement of the question. There are now pending in the various Federal courts approximately twelve railroad reorganization proceedings brought

under Section 77, and hundreds of corporate reorganization proceedings brought under Section 77 (b) of the Bankruptcy Act as amended; and, as indicated by the court below, it is impracticable to effect final plans of reorganization while bondholders are demanding settlement in gold or its equivalent and their right to do so remains undetermined by this Court. In many such cases, as in this one, the Reconstruction Finance Corporation is vitally interested as a large creditor, holding collateral whose value is dependent upon the rights of private creditors to demand payment of their obligations in gold. In addition, there are presently pending in the Court of Claims several cases against the United States involving the right to recover the alleged market value of gold payments called for in bonds and gold certificates.

Wherefore, it is respectfully submitted that this petition should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

OCTOBER 1934.

As appellees in the two causes mentioned as pending in the Circuit Court of Appeals for the Eighth Circuit we respectfully join in the fore-

going petition of the Solicitor General and request allowance of the writ of certiorari as therein prayed.

L. W. BALDWIN and
GUY A. THOMPSON,
Trustees in Reorganization of the Missouri Pacific Railroad Company.

By EDW. J. WHITE,
Attorney for L. W. Baldwin and Guy A. Thompson, Trustees in Reorganization of the Missouri Pacific Railroad Co.

GUARANTY TRUST COMPANY
OF NEW YORK and
BENJAMIN F. EDWARDS,
Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Co.

By EDWIN S. S. SUNDERLAND,
Attorney for Guaranty Trust Company of New York and Benjamin F. Edwards, Trustees under the First and Refunding Mortgage of the Missouri Pacific Railroad Company.

90373—34——2

BRIEF IN SUPPORT OF PETITION

OPINION BELOW

The opinion of the District Court (R. 109) is reported in 7 F. Supp. 1.

JURISDICTION

The decree of the District Court was entered July 6, 1934 (R. 131). Separate appeals were allowed by the District Court on July 28, 1934, and by the Circuit Court of Appeals on July 30, 1934 (R. 137, 254). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Joint Resolution of Congress of June 5, 1933, is valid and whether, in consequence thereof and of the Executive Orders and Regulations relating to the holding and transfer of gold and foreign exchange transactions therein, and the Gold Reserve Act of 1934 (all set out in the Appendix, *infra*), mortgage bonds issued in 1903, maturing May 1, 1933, and containing a so-called gold clause, are dischargeable as to principal and interest at their face amount, dollar for dollar, in any lawful money of the United States, where the debtor and its properties are being administered in reor-

ganization proceedings brought on March 31, 1933, under Section 77 of the Bankruptcy Act, as amended, c. 204, 47 Stat. 1467, 1474.

ARGUMENT

I

ISSUANCE OF CERTIORARI AT THE PRESENT STAGE OF THE PROCEEDING IS SUPPORTED BY THE STATUTE AND BY THE RULES AND PRACTICE OF THIS COURT

Section 240 (a), Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938 (U. S. C., Title 28, Sec. 347):

> In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, *upon the petition of any party thereto,* whether Government or other litigant, to require by certiorari, *either before or after a judgment or decree by such lower court,* that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal. [Italics supplied.]

Supreme Court Rule 39:

> *Proceedings to bring up to this court on writ of certiorari* a case pending in a circuit court of appeals or the Court of Appeals of the District of Columbia, *before judgment* is given in such court, should conform, as near as may be, to the provisions of Rule

> 38; and similar reasons for granting or refusing the application will be applied. *That the public interest will be promoted by prompt settlement in this court of the questions involved may constitute a sufficient reason.* [Italics supplied.]

It is respectfully submitted that the public interest will be promoted by prompt settlement in this Court of the questions involved within the contemplation of Rule 39.

The following cases are indicative of exigencies which have in the past moved this Court to issue writs of certiorari before judgment in the Circuit Courts of Appeals:

The Three Friends, 166 U. S. 1, involving the construction of a statute dealing with the punishment of persons aiding in foreign insurrections and thus affecting our relations with a foreign country.

Forsyth v. *Hammond*, 166 U. S. 506, involving a conflict between a State and a Federal court respecting the validity of the annexation of certain land by a city.

White v. *Mechanics Securities Corporation*, 269 U. S. 283, involving suits brought, under the Trading with the Enemy Act, upon notes issued by the Imperial German Government, several cases involving the same questions of law having been taken on appeal to the Supreme Court and the entire group of cases argued together.

Royal Insurance Co. v. *Fleet Corporation*, 280 U. S. 320, 325, involving the question, also pre-

sented in other cases, whether the Suits in Admiralty Act excluded other remedies which had been invoked by the plaintiffs.

Eastern Equities Corp. v. *United States,* 282 U. S. 409, 415 (note 2), involving questions under the income tax laws which were presented in other cases then pending in the Supreme Court.

Piedmont & Northern Railway Co. v. *Interstate Commerce Commission,* 286 U. S. 299, involving the jurisdiction of the Commission over the construction of an extension of an interurban electric railroad.

See also *Degge* v. *Hitchcock,* 229 U. S. 162, 170, discussing the use of certiorari to remove a record before judgment from a court without jurisdiction.

In *Gay* v. *Ruff,* 292 U. S. 25, 30, the Court referred with approval to the practice of reviewing a case pending in and not yet decided by the Circuit Court of Appeals.

II

THE POWER OF THE COURT IS NOT AFFECTED BY THE FACT THAT THE PETITIONERS PREVAILED IN THE DISTRICT COURT

Section 240 (a) of the Judicial Code, as amended, hereinbefore quoted, specifically authorizes the issuance of the writ "upon the petition of any party." The use of these words would not be understandable if it were intended that only the losing party were authorized to petition. Furthermore, considering that promotion of the public interest by prompt settlement of the questions involved is a prime

reason for issuance of certiorari before judgment, under the interpretation of the statute embodied in Rule 39, there is no apparent justification for implying a condition that the writ must be sought by the losing party, whose interest with respect to prompt settlement might be opposed to that of the public.

The history of the statute supports this conclusion. In its original form it was a part of Section 6 of the Circuit Courts of Appeals Act of March 3, 1891, c. 517, 26 Stat. 826. That section provided that judgments or decrees of the Circuit Courts of Appeals in certain classes of cases should be final—

> excepting that in every such subject within its appellate jurisdiction the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision. And thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit courts of appeals in such case, or it may require that the whole record and cause may be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.
>
> And excepting also that in any such case as is hereinbefore made final in the circuit court of appeals it shall be competent for

> the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

It will be observed that in its original form the statute contained no express provision concerning the mode of application for a writ of certiorari. As in the case of certification by the Circuit Court of Appeals (*Louisville, etc., Ry. Co.* v. *Pope,* 74 Fed. 1), it was evidently intended that the writ should issue primarily at the instance of the Court. The purpose of providing for review on certiorari was to supplement certification by giving to the Supreme Court an opportunity, independently of the Circuit Courts of Appeals, to determine that a question merited review by the Supreme Court.[1]

[1] The House Bill contained a provision for certification by the Circuit Court of Appeals, but not for certiorari at the instance of the Supreme Court, (21 Cong. Rec. 3402). The Senate Bill, as first introduced, provided for certiorari, in addition to certification, in cases "pending before the Cir- Court of Appeals." This was amended, on motion of Senator Evarts, in charge of the Bill, to read as it was finally enacted. Senator Evarts thus explained the reason for adding review by certiorari in cases made final in the Circuit Courts of Appeals:

"* * * I should deprecate any opinion in advance that these courts [Circuit Courts of Appeals] would not fully meet the interest and confidence that should be invited for them, but still there should be something besides a mere judgment within these courts as to what ought to be reviewed in the interest of jurisprudence and uniformity of decision, and that is that the Supreme Court shall have a right, in any of these cases that are thus made final, by certiorari to take up

The provisions for a certificate and those for certiorari in the Act of 1891 have been construed *in pari materia.* See *American Construction Co.* v. *Jacksonville, Tampa & Key West Railway Co.,* 148 U. S. 372, 384–5.

The Judicial Code of 1911 and the Judiciary Act of 1925 amended the provisions for certiorari to the Circuit Courts of Appeals. (U. S. C., Title 28, Sec. 347.) In 1911 the words "civil or criminal" and "upon the petition of any party thereto", which appear in the present law, were inserted.

The immediate occasion for amending the statute was to remove the doubt as to the right of the United States to obtain review in criminal cases. *United States* v. *Gulf Refining Co.,* 268 U. S. 542, 544–545; 46 Cong. Rec. 2134. This, however, was not the sole purpose intended to be accomplished, as indicated both by the language employed and by the following statement of the Managers on the Part of the House, annexed to the Conference Report on the Bill (46 Cong. Rec. 4001):

> The effect of this amendment is to make more clear the right of the Supreme Court of the United States by writ of certiorari to bring before it for review any case in which the judgment or decree of the circuit court of appeals is made final by the pro-

to itself for final determination this or that case, and in that way the scheme of the committee does firmly and peremptorily make a finality on such subjects as we think in their nature admit of finality, and at the same time leaves flexibility, elasticity, and openness for supervision by the Supreme Court" (21 Cong. Rec. 10222).

visions of the act, and to define more accurately the method by which such writ might be obtained.

In the Judiciary Act of 1925 the phrase "whether Government or other litigant" was added. This amendment did not limit the meaning of the phrase "any party thereto." Its purpose was to place beyond question the right of the United States to petition for certiorari in a criminal case. See the Analysis of the Bill presented by the Committee of Justices, in Hearings on S. 2060, 68th Congress, 1st Session, page 13.

The amendments to the Act of 1891 have thus not limited its original scope, but have emphasized the wide latitude of the Court in exercising the power to require cases to be brought before it from the Circuit Courts of Appeals by writ of certiorari. This latitude may be contrasted with the historically limited right of parties to take an appeal. Thus, for example, although an appeal may be taken only from final judgments or decrees, even where the statute does not expressly so require, certiorari may issue to review interlocutory orders or decrees even where the statute contains no such express provision. Compare *Slaker* v. *O'Connor*, 278 U. S. 188, with *Gay* v. *Ruff*, 292 U. S. 25, and cases cited therein. The present case is therefore not governed by the requirements imposed in the case of an appeal. Compare *Lindheimer* v. *Illinois Bell Telephone Co.*, 292 U. S. 151, 176.

This is not a case of a petition for review by a successful party of a judgment in his favor. There

exists an actual controversy, the prompt settlement of which will promote the public interest, within the contemplation of Rule 39. Necessarily it is only in an exceptional case that the public interest warranting certiorari is suggested by a party not aggrieved by an adverse decision. This explains the dearth of precise precedents [2] but does not bear upon the power of the Court.

CONCLUSION

The public interest will be promoted by the granting of this petition and the resultant prompt settlement in this Court of the questions involved.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

ANGUS D. MACLEAN,
Assistant Solicitor General.

STANLEY REED,
General Counsel, Reconstruction Finance Corporation.

JOHN T. FOWLER, JR.,
PAUL A. FREUND,
Attorneys.

OCTOBER 1934.

[2] In *United States* v. *Fall*, 281 U. S. 757, the Government, after a conviction in the Supreme Court of the District of Columbia, and an appeal by the defendant to the Court of Appeals, petitioned for certiorari before argument in that court. The petition was denied without comment. The denial can be adequately explained by the probable insufficiency of the reasons advanced for granting the writ. The Government urged that the precarious health of the defendant required, in the interests of justice, a prompt settlement by this Court of the question of his guilt.

APPENDIX

EMERGENCY BANKING ACT OF 1933
[c. 1, 48 Stat. 1]

An Act To provide relief in the existing national emergency in banking, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.

TITLE I

SECTION 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

SEC. 2. Subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

> "(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under

such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation."

SEC. 3. Section 11 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

"(n) Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all in-

dividuals, partnerships, associations and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations, and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise."

* * * * *

EXECUTIVE ORDER OF APRIL 5, 1933

By virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to provide relief in the existing national emergency in banking, and for other purposes", in which amendatory Act Congress declared that a serious emergency exists, I, Franklin D. Roosevelt, President of the United States of America, do declare that said national emergency still

continues to exist and pursuant to said section do hereby prohibit the hoarding of gold coin, gold bullion, and gold certificates within the continental United States by individuals, partnerships, associations and corporations—and hereby prescribe the following regulations for carrying out the purposes of this order:

SECTION 1. For the purposes of this regulation, the term "hoarding" means the withdrawal and withholding of gold coin, gold bullion or gold certificates from the recognized and customary channels of trade. The term "person" means any individual, partnership, association or corporation.

SECTION 2. All persons are hereby required to deliver on or before May 1, 1933, to a Federal reserve bank or a branch or agency thereof or to any member bank of the Federal Reserve System all gold coin, gold bullion and gold certificates now owned by them or coming into their ownership on or before April 28, 1933, except the following:

(a) Such amount of gold as may be required for legitimate and customary use in industry, profession or art within a reasonable time, including gold prior to refining and stocks of gold in reasonable amounts for the usual trade requirements of owners mining and refining such gold.

(b) Gold coin and gold certificates in an amount not exceeding in the aggregate $100 belonging to any one person; and gold coins having a recognized special value to collectors of rare and unusual coins.

(c) Gold coin and bullion earmarked or held in trust for a recognized foreign government or for-

eign central bank or the Bank for International Settlements.

(d) Gold coin and bullion licensed for other proper transactions (not involving hoarding) including gold coin and bullion imported for reexport or held pending action on applications for export licenses.

SECTION 3. Until otherwise ordered any person becoming the owner of any gold coin, gold bullion, or gold certificates after April 28, 1933, shall, within three days after receipt thereof, deliver the same in the manner prescribed in Section 2; unless such gold coin, gold bullion or gold certificates are held for any of the purposes specified in paragraphs (a), (b) or (c) of Section 2; or unless such gold coin or gold bullion is held for purposes specified in paragraph (d) of Section 2 and the person holding it is, with respect to such gold coin or bullion, a licensee or applicant for license pending action thereon.

SECTION 4. Upon receipt of gold coin, gold bullion or gold certificates delivered to it in accordance with Sections 2 or 3, the Federal reserve bank or member bank will pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States.

* * * * *

SECTION 9. Whoever willfully violates any provision of this Executive Order or of these regulations or of any rule, regulation or license issued thereunder may be fined not more than $10,000, or, if a natural person, may be imprisoned for not more

than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisonment, or both.

* * * * *

FRANKLIN D. ROOSEVELT.

EXECUTIVE ORDER OF APRIL 20, 1933

* * * * *

1. Until further order, the earmarking for foreign account and the export of gold coin, gold bullion or gold certificates from the United States or any place subject to the jurisdiction thereof are hereby prohibited, except that the Secretary of the Treasury, in his discretion and subject to such regulations as he may prescribe, may issue licenses authorizing the export of gold coin and bullion (a) earmarked or held in trust for a recognized foreign government or foreign central bank or the Bank for International Settlements, (b) imported for reexport or gold in reasonable amounts for usual trade requirements of refiners importing gold bearing materials under agreement to export gold, (c) actually required for the fulfillment of any contract entered into prior to the date of this order, by an applicant who in obedience to the Executive Order of April 5, 1933 has delivered gold coin, gold bullion or gold certificates, and (d) with the approval of the President, for transactions which he may deem necessary to promote the public interest.

* * * * *

FRANKLIN D. ROOSEVELT.

PUBLIC RESOLUTION—NO. 10—73D CONGRESS,
1ST SESS., C. 48, 48 STAT. 112

[H. J. Res. 192]

JOINT RESOLUTION

To assure uniform value to the coins and currencies of the United States

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, *or in an amount in money of the United States measured thereby,* is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such pro-

vision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, ex-

cept that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

Approved, June 5, 1933, 4.40 p. m.

Executive Order of August 28, 1933

By virtue of the authority vested in me by section 5 (b) of the Act of October 6, 1917, as amended by section 2 of the act of March 9, 1933, entitled "An act to provide relief in the existing national emergency in banking and for other purpose", I, Franklin D. Roosevelt, President of the United States of America, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following provisions for the investigation and regulation of the hoarding, earmarking, and export of gold coin, gold bullion, and gold certificates by any person within the United States or any place subject to the jurisdiction thereof; and for the investigation and regulation of transactions in foreign exchange and transfers of credit and the export or withdrawal of currency from the United States or any place subject to the jurisdiction thereof by any person within the United States or any place subject to the jurisdiction thereof.

Sec. 2. *Definitions.*—As used in this order the term "person" means an individual, partnership, association, or corporation; and the term "the United States" means the United States and any place subject to the jurisdiction thereof.

Sec. 3. *Returns.*—Within fifteen days from the date of this order every person in possession of

and every person owning gold coin, gold bullion, or gold certificates shall make under oath and file as hereinafter provided a return to the Secretary of the Treasury containing true and complete information relative thereto, including the name and address of the person making the return; the kind and amount of such coin, bullion, or certificates held and the location thereof; if held for another, the capacity in which held and the person for whom held, together with the post-office address of such person; and the nature of the transaction requiring the holding of such coin, bullion, or certificates and a statement explaining why such transaction cannot be carried out by the use of currency other than gold certificates; provided that no returns are required to be filed with respect to—

(a) Gold coin, gold bullion, and gold certificates in an amount not exceeding in the aggregate $100 belonging to any one person;

(b) Gold coin having a recognized special value to collectors of rare and unusual coin;

(c) Gold coin, gold bullion, and gold certificates acquired or held under a license heretofore granted by or under authority of the Secretary of the Treasury; and

(d) Gold coin, gold bullion, and gold certificates owned by Federal Reserve banks.

* * * * *

SEC. 4. *Acquisition of Gold Coin and Gold Bullion.*—No person other than a Federal reserve bank shall after the date of this order acquire in the United States any gold coin, gold bullion, or gold certificates except under license therefor issued pursuant to this Executive order. * * *

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the acquisition of—

(a) Gold coin or gold bullion which the Secretary is satisfied is required for a necessary and lawful transaction for which currency other than gold certificates cannot be used, by an applicant who establishes that since March 9, 1933, he has surrendered an equal amount of gold coin, gold bullion, or gold certificates to a banking institution in the continental United States or to the Treasurer of the United States;

(b) Gold coin or gold bullion which the Secretary is satisfied is required by an applicant who holds a license to export such an amount of gold coin or gold bullion issued under subdivisions (c) or (d) of section 6 hereof, and

(c) Gold bullion which the Secretary, or such agency as he may designate, is satisfied is required for legitimate and customary use in industry, profession, or art by an applicant regularly engaged in such industry, profession, or art, or in the business of furnishing gold therefor.

Licenses issued pursuant to this section shall authorize the holder to acquire gold coin and gold bullion only from the sources specified by the Secretary of the Treasury in regulations issued hereunder.

SEC. 5. *Holding of Gold Coin, Gold Bullion, and Gold Certificates.*—After thirty days from the date of this order no person shall hold in his possession or retain any interest, legal or equitable, in any gold coin, gold bullion, or gold certificates situated in the United States and owned by any person subject to the jurisdiction of the United

States, except under license therefor issued pursuant to this Executive order; provided, however, that licenses shall not be required in order to hold in possession or retain an interest in gold coin, gold bullion, or gold certificates with respect to which a return need not be filed under section 3 hereof.

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the holding of—

(a) Gold coin, gold bullion, and gold certificates, which the Secretary is satisfied are required by the person owning the same for necessary and lawful transactions for which currency, other than gold certificates, cannot be used;

(b) Gold bullion which the Secretary, or such agency as he may designate, is satisfied is required for legitimate and customary use in industry, profession, or art by a person regularly engaged in such industry, profession, or art or in the business of furnishing gold therefor;

(c) Gold coin and gold bullion earmarked or held in trust since before April 20, 1933, for a recognized foreign government or foreign central bank or the Bank for International Settlements; and

(d) Gold coin and gold bullion imported for reexport or held pending action upon application for export licenses.

* * * * *

SEC. 9. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this order. * * *

SEC. 10. Whoever willfully violates any provision of this Executive order or of any license, order, rule, or regulation issued or prescribed hereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

* * * * *

FRANKLIN D. ROOSEVELT.

Order of the Secretary of the Treasury of December 28, 1933, as Amended by Order of the Secretary of the Treasury of January 11, 1934.

Whereas Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the Act of March 9, 1933, entitled "An act to provide relief in the existing national emergency in banking, and for other purposes", provides in Subsection (n) as follows:

* * * * *

Whereas in my judgment such action is necessary to protect the currency system of the United States:

Now, therefore, I, Henry Morgenthau, Jr., Acting Secretary of the Treasury, do hereby require every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the United States, owned by such person, except as follows:

(a) Gold bullion owned by a person now holding such gold under a license heretofore granted by or

under authority of the Secretary of the Treasury, pursuant to the executive order of August 28, 1933, relating to the hoarding, export and earmarking of gold coin, bullion, or currency and to transactions in foreign exchange;

(b) Gold coin having a recognized special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as $2.50 pieces) unless held, together with rare and unusual coin, as part of a collection for historical, scientific, or numismatic purposes, containing not more than four quarter eagles of the same date and design and struck by the same Mint.

(c) Unmelted scrap gold sweepings in an amount not exceeding in the aggregate $100 belonging to any one person; and gold which has been put through a process of fabrication for a specific and customary industrial, professional, or ornamental use;

(d) Gold coin, gold bullion, and gold certificates owned by a Federal Reserve Bank or the Reconstruction Finance Corporation; and

(e) Gold bullion and foreign gold coin now situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, owned by a person not domiciled or doing business in the continental United States.

SECTION 2. *Delivery.*—The gold coin, gold bullion, and gold certificates herein required to be paid and delivered to the Treasurer of the United States shall be delivered by placing the same forthwith in the custody of a Federal reserve bank or branch or a bank member of the Federal Reserve System for the account of the United States, * * *.

SECTION 3. *Payment and Reimbursement of Costs.*—Upon receipt of the confirmation signed and delivered as required under Section 2, the Secretary of the Treasury will pay for the gold coin, gold bullion, and gold certificates placed in custody for the account of the United States in accordance with Section 2, an equivalent amount of any form of coin or currency coined or issued under the laws of the United States designated by the Secretary of the Treasury. * * *

* * * * *

SECTION 5. Any individual, partnership, association, or corporation failing to comply with any requirement hereof or of any rules or regulations issued by the Secretary of the Treasury hereunder shall be subject to the penalty provided in Section 11 (n) of the Federal Reserve Act, as amended.

This order may be modified or revoked at any time.

H. MORGENTHAU, Jr.,
Acting Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT,
The White House.

DECEMBER 28, 1933.

ORDER OF THE SECRETARY OF THE TREASURY OF JANUARY 15, 1934

* * * * *

Whereas a reasonable time has elapsed within which any person required to deliver gold coin, gold bullion, and gold certificates could pay and deliver to the Treasurer of the United States in the manner provided in said Order of December 28, 1933 the gold coin, gold bullion, and gold certificates

situated in the United States, owned by such person; and

Whereas in my judgment such action is necessary to protect the currency system of the United States;

Now, therefore, I, Henry Morgenthau, Jr., Secretary of the Treasury, do hereby fix midnight of Wednesday, January 17, 1934, as the expiration of the period within which any gold coin, gold bullion, or gold certificates may be paid and delivered to the Treasurer of the United States in compliance with the requirements contained in such Order of December 28, 1933, as amended.

* * * * *

H. MORGENTHAU, Jr.,
Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT,
The White House.

JANUARY 15, 1934.

GOLD RESERVE ACT OF 1934

(Public, No. 87, 73d Congress, Approved January 30, 1934)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That the short title of this Act shall be the "Gold Reserve Act of 1934."

SEC. 2. (a) Upon the approval of this Act all right, title, and interest, and every claim of the Federal Reserve Board, of every Federal Reserve Bank, and of every Federal Reserve agent, in and

to any and all gold coin and gold bullion shall pass to and are hereby vested in the United States; * * *

* * * * *

SEC. 3. The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. * * *

* * * * *

SEC. 5. No gold shall hereafter be coined, and no gold shall hereafter be paid out or delivered by the United States: *Provided, however,* That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with the Act of January 29, 1874 (U. S. C., title 31, sec. 367). All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct.

SEC. 6. Except to the extent permitted in regulations which may be issued hereunder by the Secretary of the Treasury with the approval of the President, no currency of the United States shall be redeemed in gold: *Provided, however,* That gold certificates owned by the Federal Reserve Banks shall be redeemed at such times and in such amounts as, in the judgment of the Secretary of the Treasury, are necessary to maintain the equal purchasing power of every kind of currency of the United States: *And provided further,* that the reserve for United States notes and for Treasury notes of 1890, and the security for gold certificates (including the gold certificates held in the Treasury for credits payable therein) shall be maintained in gold bullion equal to the dollar amounts required by law, and the reserve for Federal Reserve notes shall be maintained in gold certificates, or in credits payable in gold certificates maintained with the Treasurer of the United States under section 16 of the Federal Reserve Act, as heretofore and by this Act amended.

No redemptions in gold shall be made except in gold bullion bearing the stamp of a United States mint or assay office in an amount equivalent at the time of redemption to the currency surrendered for such purpose.

* * * * *

SEC. 12. Paragraph (b) (2), of section 43, title III, of the Act approved May 12, 1933 (Public, Numbered 10, Seventy-third Congress), is amended by adding two new sentences at the end thereof, reading as follows:

"Nor shall the weight of the gold dollar be fixed in any event at more than 60 per

centum of its present weight. The powers of the President specified in this paragraph shall be deemed to be separate, distinct, and continuing powers, and may be exercised by him, from time to time, severally or together, whenever and as the expressed objects of this section in his judgment may require; except that such powers shall expire 2 years after the date of enactment of the Gold Reserve Act of 1934 unless the President shall sooner declare the existing emergency ended, but the President may extend such period for not more than one additional year after such date by proclamation recognizing the continuance of such emergency."

* * * * *

SEC. 13. All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made or issued by the President of the United States or the Secretary of the Treasury, under the Act of March 9, 1933, or under section 43 or section 45 of title III of the Act of May 12, 1933, are hereby approved, ratified, and confirmed.

* * * * *

A Proclamation

By the President of the United States of America

* * * * *

Whereas, I find, from my investigation, that, in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies, it is necessary to fix the weight of the gold dollar at 15 5/21 grains nine-tenths fine.

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States, by

virtue of the authority vested in me by Section 43, Title III, of said Act of May 12, 1933, as amended, and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare and fix the weight of the gold dollar to be 15 5/21 grains nine-tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may seem to require.

In witness whereof I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done in the City of Washington at 3:10 o'clock in the afternoon, Eastern Standard Time, this 31st day of January, in the year of our Lord one thousand nine hundred and thirty-four, and of the Independence of the United States the one hundred and fifty-eighth.

[SEAL] FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL,

Secretary of State.

Approved and effective January 31, 1934.

(5077–C)

U. S. GOVERNMENT PRINTING OFFICE: 1934